IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7468 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI HIMMATSINH PARMAR

Versus

K D RATHOD

Appearance:

MR BHARGAV N BHATT for Petitioner No. 1
MR LB DABHI AGP for Respondents No. 1-3
MR HV PUJARA for Respondent No. 4
MR PREMAL R JOSHI for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/01/2002

ORAL JUDGEMENT

1. By means of this petition, the petitioner has sought for quashing and setting aside the impugned notification at Annexure-E to this petition dated 23-9-1997.

2. Precisely in the present case, the question is earlier notification dated 5-8-1997 was issued by the Government of Gujarat bifurcating the panchayat area and subsequently within two months second notification dated 23-9-1997 was issued amalgamating the panchayat area. The main contention of the learned counsel for the petitioner is that under the powers conferred u/s 7 of the Gujarat Panchayats Act, 1993, after consultation with the concerned village, Panchayat, Taluka Panchayat and District Panchayat the notification dated 5-8-1997 was issued. It is also stated that the said notification was issued after conducting necessary inquiry and the subsequent notification was issued by the State Government on 23-9-1997 without consulting Taluka Panchayat, Taluka Panchayat and District Panchayat and hence second notification issued by the State Government is illegal and against the provisions of law. Hence, the impugned notification is not sustainable in the eye of law. He also submitted that precisely the matter has been referred to the larger Bench of this Court by the order dated 8-10-2001 passed in Special Civil Application No. 2804/01 and in Spl. C.A. No. 497/01 which reads as under:

> "In this cases initially the Government consulted necessary Taluka Panchayats and Gram Panchayats and took conscious decision not to bifurcate the village. Thereafter, the Government again took decision to bifurcate the village without fresh consultation. The division Bench will have to consider what is the scope of review in this behalf and the Division Bench will have to consider as to whether the Government can issue notifications without again consulting the Taluka Panchayats and Village Panchayats. It may be noted that after the earlier consultation when fresh Notification is issued, the topography of the village has been changed. The Division Bench will have to consider as to whether in the light of the decisions referred earlier, the Government will have to issue a fresh notification in this behalf."

3. In the present case, the petitioner is an agriculturist, social worker and he was last elected Sarpanch of Divel Group Gram Panchayat. The respondent no. 1 is Dy. Secretary to the State Government, Panchayats, Rural Housing and Rural Development Department, Gandhinagar. Whereas the respondent no. 2 is The District Development Officer, District Panchayat,

Kheda, Nadiad and third respondent is The State of Gujarat, Panchayats Department.

4. There existed Divel Group Panchayat, consisting the area of village Divel and Kathana station. By virtue of notification bifurcating the two villages issued on 9-11-1987, the same was divided in two separate identity. On 28-3-1988 fresh notification was issued giving effect of amalgamation of the aforesaid villages making it to be one again. At the relevant time both the aforesaid notifications were challenged by two separate petitions being Spl. Civil Applications No. 6836/87 and 2411/88 before this Court. This Court rejected the aforesaid petitions and L.P.A.. No.532/98 was preferred and later on the same was withdrawn. As such, the altered effect of the second notification remained in operation within the limits of Althan village Panchayat. Later on, another notification was issued reuniting the two villages and by resorting to the position prior to 9-11-1987, it was challenged by the petitioner in this Court by way of Special Civil Application No. 3873/89 and that petition was rejected by this Court vide its order dated 24-7-1995 with certain observations and the respondent no. 2 was directed to consider as to whether or not newly constituted Panchayat in terms of the notification at Annexure-D to the petition requires to be bifurcated as it was originally done in view of the resolution passed by the newly constituted Panchayat and in view of the decision of this Court at Annexure-B to this petition as affirmed in the appeal by the Letters Patent Bench. It would be open to the newly constituted Panchayat for making a representation for the purpose vide letter dated 24-7-1995 in view of the resolution passed by the newly constituted Panchayat dated 27-8-1994 which was passed by the majority of 6 against 3, the Second Respondent and the First Respondent had initiated the inquiry within the scope of Section 7 of the Act and on conclusion thereof a notification was issued by the first respondent bifurcating the two villages. By the aforesaid notification existing village Divel Group Gram Panchayat was divided in Divel and Kathana Station. The second respondent had directed dissolution of the existing panchayat and further appointed two different administrator in respect of two newly constituted villages. The petitioner pursuant to the order passed by the second respondent had handed over the charge. Without any inquiry and without any reason, the first respondent had again issued fresh notification exercising the powers u/s 7 of the Act reuniting two villages and that was done in the colourable exercise of powers in delegation of power conferred to the competent authority

under the Act, which is in violation of Article 14 of the Constitution of India. Issuance of the subsequent notification dated 23-9-1997 amalgamating both the village panchayats is not in conformity with the procedure laid down in Section 7 of the Act and the inquiry as prescribed for the purpose and consultation with the Taluka Panchayat, Gram Panchayat and District Panchayat. It is colourable exercise of powers with ulterior reasons. Subsequently, the notification was issued within two months which amounts to malafide exercise of powers and without any further inquiry or consultation. The first respondent is exercising the power with malice, with a view to please the minority which is neither desired nor allowed to be continue and hence this petition.

5. The affidavit-in-reply has been filed by the respondent no. 4 wherein it is stated that the first notification was issued on 9-11-1987 for bifurcation of Divel Group Gram Panchayat. Thereafter, the second notification was issued on 28-3-1988 whereby both the Gram Panchayats were amalgamated into one Gram Panchayat, as Divel Gram Panchayat. First notification dated 9-11-1987 was challenged by way of filing Special Civil Application No. 6836/87 and second notification dated 28-3-1988 was challenged in the Special Civil Application No. 2411/88. This Court rejected both the petitions by the common order dated 23-11-1988. Letters Patent Appeal No. 532/88 was preferred and that was ultimately withdrawn on 15-3-1989. On 13-4-1989 third notification was issued u/s 9 (2) of the Gujarat Panchayats Act notifying the area of both the Gram Panchayats of Divel and Kathana constituting one Gram Panchayat in the name and style of Divel Gram Panchayat. The petitioner challenged the aforesaid notification by filing Special Civil Application No. 3873/89 which was rejected by this Court on 24-7-1995. Liberty was given to the newly constituted Gram Panchayat to make representation for that purpose to the State Government. Divel Gram Panchayat received an application dated 10-12-1987 from the habitants of the village. The meeting of Divel Gram Panchayat was held on 22-12-1987. By the resolution No. 13, Divel Gram Panchayat decided not to bifurcate existing Gram panchayat. After considering the application dated 10-12-1987 Resolution No. 13 was passed by Divel Gram Panchayat in the meeting held on 22-12-1987. The Executive Committee of Borsad Taluka Panchayat, passed resolution no. 93 on16-5-1988 whereby they unanimously decided not to bifurcate the existing Gram Panchayat. The District Development Officer visited village Divel on 29-3-1989 to prepare his report whether

the Divel Gram Panchayat requires to be bifurcated or not. The District Development Officer himself visited the villages Divel and Kathana Station and after consultation with the village people prepared his report to the effect that if the Panchayat is bifurcated in that case irreparable loss will cause to the people of the said village and development of the village would be affected. The District Development Officer sent his report to the Development Commissioner. Thereafter, the State Government passed the notification dated 13-4-1989 for amalgamation of the Panchayat. The petitioner has produced and relied upon the resolution dated 27-8-1994 passed by the Panchayat for bifurcation of the Panchayat. At that time, the petitioner himself was Sarpanch of the village and hence for his personal interest passed resolution for bifurcation of Panchayat ignoring all the previous resolutions. Though the petitioner has ignored the visiting report prepared by the District Development Officer after consulting the people of village Divel. With the ulterior motive and for his personal interest, the petitioner being Sarpanch of village Divel, passed the resolution dated 27-8-1994 for bifurcation of Divel Gram Panchayat.

6. Heard the learned counsel for the parties and perused the relevant material on record.

7. Relevant provisions of Section 7 of the Gujarat Panchayats Act, 1993, reads as under :

"Section 7 : Recommendation of specification of village :

(1) After making such inquiries as may be prescribed, the competent authority may recommend any local area comprising a revenue village, or a group of revenue villages, or hamlets forming part of a revenue village, for being specified a village under clause (g) of article 243 of the Constitution, if the population of such local area does not exceed fifteen thousand.

(2) After consultation with the taluka panchayat, the district panchayat and village panchayat concerned (if already constituted), the competent authority may at any time recommend inclusion with or exclusion from any village any local area to be a village, to the Governor for

exercise of this powers under clause (g) of Article 243 of the Constitution.

8. It is not in dispute that the inquiry was conducted by the District Development Officer and he also sent report to the authority concerned. The authority concerned also consulted village Panchayat, Taluka Panchayat and District Panchayat. Thereafter, the notification dated 5-8-1997 was issued bifurcating the local limits of village Panchayat. Thereafter, within two months another notification was issued by the Government of Gujarat reuniting the two village Panchayats and cancelling the earlier notification dated 5-8-1997. If the authority concerned has committed some irregularities in issuing earlier notification, after rectifying the irregularities, the authority concerned can issue another relevant notification as the inquiry report and consultation with the concerned Village Panchayat, Taluka Panchayat and District Panchayat the papers were placed before the authority concerned and they are not required to hold other inquiries or consultations as the second notification has been issued within a short period of two months. It cannot be said at this stage that the authority concerned has no power to cancel the earlier notification. Secondly, the requirements have not been considered as the requirement with regard to the inquiry and consultations all the papers were there before the authority concerned and if all the papers were before the authority concerned, the State authority has reconsidered all the papers and issued fresh notification on the basis of the material before it. Therefore, it cannot be said that due to some circumstances, the State authority was required to have fresh inquiry or consultations with the relevant and concerned village Panchayat, Taluka Panchayat and District Panchayat. In short period, some irregularities were observed by the State authority and thereafter rectifying those irregularities the State authority has issued fresh notification on 23-9-1997 amalgamating both the village Panchayats into one village Panchayat excluding local area of Kathana Station from Divel Gram Panchayat of Borsad Taluka. Thus, the second notification has been issued regarding bifurcation has been cancelled and both the village panchayats were reunited by the notification dated 23-9-1997. So far as the question regarding reference of this Court vide order dated 8-10-2001 is concerned, in that reference it was the matter to be considered where the Government again took the decision to bifurcate the village without fresh consultation or not.

9. In the present case, the period is so short during which the State authority had no time fresh consultation and fresh inquiry. As such, that depends where fresh consultation and inquiry is required for bifurcation or reuniting the two village Panchayats and to be decided on the facts of each case and there cannot be absolute rule that without having any fresh inquiry report and fresh consultation, the State Government cannot change its earlier notification.

10. In the facts and circumstances, I do not find any good ground for interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Therefore, this petition is dismissed. Rule is discharged, with no order as to costs. Interim relief granted earlier by this Court, stands vacated forthwith.

11. After dictation of this judgement is over, the learned counsel for the petitioner requested this Court to continue interim relief granted earlier by this Court for a further period of four weeks so that the petitioner can approach higher forum. This is a matter of 1997 and that is coming after 4 years and the same is required to be decided. In these facts and circumstances of the case, I do not find any good ground accede the aforesaid request of the learned counsel for the petitioner and accordingly the same is rejected.

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/JVSatwara/